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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 533

JAMES W. DUTTON, ET AL.,
Appellants,

v.

J. MILLARD TAWES, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF MARYLAND,
Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF MARYLAND

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

The Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves to dismiss or affirm on the following grounds:

(a) The Federal question sought to be reviewed was not raised before the Circuit Court of Baltimore City, nor was it expressly passed upon by the Court of Appeals of Maryland;

(b) The appeal is not within the jurisdiction of this Court because it has not been taken in conformity with statute; and

(c) This appeal does not present the question sought to be reviewed or any substantial Federal question, and the judgment rests on an adequate non-Federal basis.

STATEMENT

This is an appeal from a decision of the Court of Appeals of Maryland affirming the decree of the Circuit Court of Baltimore City (Anselm Sodaro, Judge). The opinion is reported in 225 Md. 484, 171 A. 2d 688.

This case arose out of a complaint filed by the Appellants in the Circuit Court of Baltimore City seeking a declaratory decree that the text of Chapter 269 of the Laws of Maryland of 1959 (which Act ratified a compact between the State of Maryland and the Commonwealth of Virginia relating to the regulation of fishery in the Potomac River) had not been published in accordance with the requirements of Section 5 of Article XVI of the Maryland Constitution and therefore not legally adopted. The complaint alleged that Chapter 269 of the Acts of 1959, *supra*, had been referred to the voters of the State of Maryland in conformity with the referendum provisions of Article XVI of the Constitution of Maryland, and that said Act was placed upon the ballot in the general election held on November 8, 1960. The complaint further alleged that the text of Chapter 269 was not published in sufficient newspapers within the State of Maryland, as required by Article 33, Section 170, of the Annotated Code of Maryland (1957 Ed.), which was enacted in compliance with the mandate of Section 5(a) of Article XVI of the Constitution of Maryland. The gravamen of the complaint further alleged that the failure to publish the text of Chapter 269, *supra*, made the election on said referendum null and void and of no effect. It was collaterally alleged that Chapter 269 was unconstitutional in that it violated Articles 4 and 5 of the Declaration of Rights of the Constitution of Maryland, and

was further unconstitutional in that it violated Section 29 of Article III of the Maryland Constitution because the title of the bill was insufficient. Nowhere in the complaint itself or in the prayers for relief was it alleged that the Appellants had been deprived of due process of law under the Fourteenth Amendment to the Constitution of the United States, nor that they or any of them had been denied equal protection of the law as set forth in the Fourteenth Amendment to the Constitution of the United States.

The Appellee filed a combined demurrer and answer, neither of which alluded to the Fourteenth Amendment to the Constitution of the United States. The principal defense of the Appellee was that the said election was conducted fairly and that there was a full and free expression of the popular will on the issue involved. The trial court ruled that the total recorded vote of 449,347 indicated that there was a full and free expression of popular will on the issue, notwithstanding the lack of full compliance with the provisions of the statute involved. In the trial court's opinion there is no mention whatsoever of the Fourteenth Amendment to the Constitution of the United States.

The Appellants thereupon noted an appeal to the Court of Appeals of Maryland and in their brief the Appellants neither alleged nor argued that the failure to fully publish the text of Chapter 269, *supra*, deprived them of any right guaranteed under the Fourteenth Amendment, nor that Chapter 269, *supra*, deprived them of due process of the law or equal protection of the law.

HISTORICAL FACTS

In order for the Court to comprehend the importance and scope of this case, the Appellee believes it necessary to present to the Court a brief historical summary of the

relations between Maryland and Virginia concerning the Potomac River. Historically, both the State of Maryland and the Commonwealth of Virginia have laid claim to the entire Potomac. These conflicting claims stem from grants made by successive kings of England in the Seventeenth Century. In 1609, James I granted to the Commonwealth of Virginia a tract of land extending 200 miles northward from Point Comfort. Virginia, therefore, claimed part of South Carolina, all of North Carolina, all of Maryland, all of Delaware and approximately one-half of Pennsylvania from ocean to ocean. In 1632, Charles I made a grant to Lord Baltimore, which included substantially what is now the State of Maryland, the south boundary of which was described as the "farther bank of the Potomac River". In 1688, James II granted unto Lord Culpepper what is now known as the Northern Neck of Virginia including the Potomac River and all of the islands within the outermost banks thereof.[1]

These conflicting grants led to considerable controversy between Maryland and Virginia both before and immediately after the Declaration of Independence. Virginia, in her Constitution of 1776, relinquished her claims in the Colonies of Maryland, Pennsylvania and North and South Carolina, stating, however, that:

> "The territories, contained within the charters, erecting the colonies of Maryland, Pennsylvania, North and South Carolina, are hereby ceded, released, and forever confirmed to the people of those colonies respectively, with all the rights of property, jurisdiction and

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[1] The history of the boundary disputes is found in *Wharton v. Wise*, 153 U.S. 155, 38 L. Ed. 669; *Barnes v. State*, 186 Md. 287 47 A. 2d 50; Sharf's *History of Maryland* (1789), Vol. 2; The Compact of 1785, Research Report No. 26 of the Legislative Council of Maryland, Carl N. Everstine (1946).

> government, and all other rights whatsoever, which might, at any time heretofore, have been claimed by Virginia, *except the free navigation and use of the rivers Patomaque and Pokomoke,* * * *." (Emphasis supplied.)

In addition to the unsettled boundary dispute, there was certain friction between Maryland and Virginia arising out of the use of the Potomac River and the Chesapeake Bay. The chief problem which concerned the State of Maryland was the practice of the Commonwealth of Virginia to levy tolls on vessels proceeding up the Chesapeake Bay through the Virginia Capes. Virginia desired to open the Potomac River for western exploration and settlement. In 1777, Virginia extended an invitation to Maryland to appoint commissioners to discuss the use of the Bay, the Potomac and the Pocomoke Rivers.[2] Maryland accepted the invitation and appointed Daniel of St. Thomas Jenifer, Thomas Stone and Samuel Chase as Commissioners. Their instructions, given by the General Assembly of Maryland, were to require Virginia to cease its practice of levying tolls on vessels proceeding up the Chesapeake Bay from the Virginia Capes.[3]

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[2] The invitation to Maryland stated the desire of the conference "to adjust and confirm the rights of each to the use and navigation and jurisdiction over the Bay of the Chesapeake, and the Rivers Potomac and Pocomoke. * * *".

[3] "1. You are to insist that the Commonwealth of Virginia shall expressly relinquish every claim of right to impose tolls on any vessel whatever sailing through the Capes of Chesapeake Bay to the State of Maryland or returning from this State through the said Capes outward bound; this you are to insist on as a condition *sine qua non;* and if not acquiesced in by the commissioners of the Commonwealth of Virginia you are to break up the conference and not enter into a discussion of any of the matters hereinafter mentioned.

"* * *

"3. You are to endeavor to obtain that the *use* and the navigation of the river Potomac, or Pocomoke, shall be free to the subjects of both states * * *."

For some unexplained reason, the Conference of 1777 failed. Thereafter, in 1784 another conference was arranged, and in March of 1785, at the invitation of George Washington, a new conference was held at Mount Vernon and the result was the adoption of the Compact of 1785. The Compact drafted at Mount Vernon was submitted to the respective legislatures and approved (Chapter 1, Laws of Maryland of 1785; Chapter 17, Virginia Acts of 1785). The Maryland Act specifically provided as follows:

> "II. BE IT ENACTED, by the General Assembly of Maryland, That the said compact is hereby approved, confirmed and ratified, and that as soon as the said compact shall be approved, confirmed and ratified, by the general assembly of the commonwealth of Virginia, thereupon, and immediately thereafter, every article, clause, matter and thing, in the same compact contained, shall be obligatory on this state and the citizens thereof, and shall be for ever faithfully and inviolably observed and kept by this government, and all its citizens, according to the true intent and meaning of the said compact; and the faith and honour of this state is hereby solemnly pledged and engaged to the general assembly of the commonwealth of Virginia, and the government and citizens thereof, that this law shall never be repealed or altered by the legislature of this government, without the consent of the government of Virginia."

The labors of the conferees of the 1785 conference were largely superseded by the Constitution of the United States, which was ratified and went into effect in 1789. To the Federal Government was surrendered the right to regulate commerce, collect tolls and to generally regulate maritime activities. The only sections retaining practical vitality were Sections 7 and 8, which insofar as is pertinent, read as follows:

> "7. The citizens of each state respectively shall have full property in the shores of Patowmack river adjoin-

ing their lands, with all emoluments and advantages thereto belonging, and the privilege of making and carrying out wharfs and other improvements, so as not to obstruct or injure the navigation of the river, but the right of fishing in the river shall be common to, and equally enjoyed by, the citizens of both states; * * *."

"8. All laws and regulations which may be necessary for the preservation of fish, * * * in the river Patowmack, * * * shall be made with the mutual consent and approbation of both states."

Throughout the ensuing years, the General Assembly of Maryland and the General Assembly of Virginia enacted concurrent legislation for the purpose of regulating the fisheries of the Potomac and Pocomoke Rivers.[4]

In 1874, both states agreed to the appointment of arbitrators to ascertain and fix the boundary between them. (See Chapter 247 of the Acts of Maryland of 1874). The arbitrators established the low water mark on the south shore of the Potomac River as the boundary between the two states. The legislation appointing the arbiters clearly reaffirmed the Compact of 1785.[5]

The award ascertaining the boundary, popularly known as the "Black-Jenkins Award", also ratified and confirmed the Compact of 1785.[6] This boundary award was approved

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[4] See the Compact of 1785, Research Report of No. 26, Maryland Legislative Council, Carl N. Everstine; and Opinion of I. Nevett Steele to Governor Lloyd of Maryland in December, 1885, and referred to in *Barnes v. State, supra*, note 1.

[5] "* * * Neither of the States, nor the citizens thereof, shall by the decision of said arbitrators be deprived of any of the rights and privileges enumerated and set forth in the Compact between them entered into in the year 1785, but that the same shall remain to and be enjoyed by the said States and the citizens thereof forever."

[6] "* * * Nothing in this act shall be construed in any way to impair, alter or abridge any rights which either state or the citizens

by Congress pursuant to Article I, Section 10, of the Constitution of the United States. (*Statutes at Large*, 1878-79, Chapter 179, page 43.)

In 1894, the Supreme Court of the United States, in *Wharton v. Wise*, 153 U.S. 155, 38 L. Ed. 669, was called upon to determine whether the Compact of 1785 continued in force after the adoption of the Constitution, except insofar as inconsistent with its provisions. Wharton was indicted by Virginia for oystering on the Virginia side of Pocomoke Sound. He was represented by Attorney General John P. Poe, who based his case upon the contention that the Compact of 1785 was still subsisting and binding. Mr. Justice Field, speaking for the Supreme Court, stated as follows:

> "As justly observed, there could not be a more solemn and conclusive recognition and assertion — so far as the two states were concerned — of the continued existence and obligatory force of the compact that is contained in this language of both in appointing the arbitrators and designating the conditions upon which their award should be accepted. The states of Maryland and Virginia not only consented to the appointment of the arbitrators upon the conditions mentioned, but their award was approved by both states and by an act of Congress. * * *."

Through the years, disagreements arose between the states as to the appropriate measures to conserve the fisheries resources of the lower Potomac River. In 1931, the two states, recognizing the depletion of the oyster beds of the Potomac River, enacted legislation which prohibited dreding by the citizens of both states. During the follow-

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thereof, may be entitled to, either by, through, under or against the Compact entered into between the States of Maryland and Virginia on the twenty-eighth day of March, seventeen hundred and eighty-five, * * *"

ing years, Virginians desired to continue their dredging operations and subsequently passed legislation authorizing dredging, to which legislation Maryland has never consented. During the period of World War II and the post-war era, the price of oysters rose sharply, and Virginians were willing to risk arrest in order to reap the golden harvest. (See "*The Compacts and The River*" by William J. McWilliams, Daily Record, June 19, 1959.)

In 1945, the General Assembly of Maryland, by joint resolution, directed that a commission be appointed to restudy the Compact and consider the establishment of an inter-state agency or authority to make and enforce regulations applicable to the fisheries of the tidewater portion of the Potomac River and of the tidewaters of the Chesapeake Bay. (See Resolution No. 17, Laws of 1945, page 1962.) As a result of the Commission's study, the General Assembly of Maryland, by Chapter 484 of the Laws of 1949, passed legislation creating a Maryland-Virginia Chesapeake-Potomac Authority by adding fifteen new articles to the Compact of 1785. The said law determined that the most efficient manner of regulating the fishery resources of the Potomac River would be through a bi-state agency. Unfortunately, at that time the Virginia Legislature refused to concur and in 1952, by Chapter 52 of the Acts of Virginia, Virginia enacted a comprehensive law providing for joint control of the Potomac River by a bi-state agency. This counter-offer by Virginia was never acquiesced in by Maryland. As a result of the inability of the two states to mutually resolve their dispute, illegal dredging by the Virginians continued in spite of a determined effort of enforcement by the Tidewater Fisheries Commission of Maryland. This matter reached a climax in 1957 when the General Assembly of Maryland, by Chapter 766 of the Acts of 1957, unilaterally abrogated the

Compact of 1785. The temper of the General Assembly of Maryland can be measured by the preamble clauses of Chapter 766.[7]

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[7] Whereas, the State of Maryland is the undisputed owner of the entire bed of the Potomac River to the low water mark on the Virginia shore, and

"Whereas, in the year 1785, the General Assembly of Maryland, by Chapter 1 of the Session Laws of that year, confirmed a compact entered into between the states of Maryland and Virginia in the year 1785, and thereafter known as the Compact of 1785, and

"Whereas, at the time of the promulgation of this Compact there were two main elements of consideration leading to the agreement between the State of Maryland and the State of Virginia; Virginia, on her part, would relinquish any right to charge tolls for vessels going to and from Maryland and passing through the Virginia Capes; Maryland, on her part, granted unto the citizens of Virginia certain rights of fishing and navigation in the waters of the Chesapeake Bay and in the Potomac and Pocomoke Rivers, and

"Whereas, by the subsequent adoption and ratification of the Constitution of the United States, important parts of the Compact of 1785 were immediately superseded and were made obsolete, since those articles of the Compact having to do with maritime matters and with interstate trade concerned areas of jurisdiction which were given to the Federal Government and henceforth were beyond the powers of the individual states, and

"Whereas, for over one hundred years the State of Virginia has recognized that these parts of the Compact have been superseded by the United States Constitution and as far back as 1849 the State of Virginia by the adoption of a Code, has only incorporated Articles 7, 8, 10 and 11 of the Compact and has regarded all other Articles as obsolete and of no further force and effect, and

"Whereas the State of Maryland has recognized the valuable natural resources lying in the Potomac River, and has sought to effectuate a uniform system of preservation and conservation of these natural resources to the mutual benefit of the citizens of both Maryland and Virginia, and

"Whereas, the citizens and law enforcement personnel of the State of Virginia have callously and intentionally disregarded, disobeyed and interfered with the enforcement of laws regulating the acquisition, preservation and conservation of natural resources in the Potomac River, and

"Whereas, the State of Maryland has requested the State of Virginia to cooperate in the preservation and conservation of these natural resources of the Potomac River which the State of Virginia

Simultaneously with the passage of Chapter 766 of the Laws of Maryland of 1957, the General Assembly enacted Chapter 770, which granted to the citizens of the State of Maryland the citizens of the State of Virginia permission to take fish, oysters and crabs from the Potomac River after complying with the Laws of the State of Maryland.[8]

The Commonwealth of Virginia, on September 13, 1957, filed a bill of complaint in the Supreme Court of the

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has effectively refused to do, all of which is to the mutual detriment of the citizens of both states, and

"Whereas, the State of Virginia has clearly demonstrated its unwillingness and open refusal to cooperate in the enforcement of existing laws and to adopt new laws for the effective enforcement of the preservation and conservation of these valuable natural resources, and

"Whereas, the State of Virginia has clearly demonstrated its intention to disregard and flout the rights of the State of Maryland as owner of the bed of the Potomac River and to interfere with the lawful rights of the State of Maryland and its citizens, and

"Whereas, the State of Maryland has ably, without incident, regulated the various rivers and waters binding on sister states, including the State of Virginia, lying outside the jurisdiction of the Compact of 1785, to the mutual and continued benefit of the citizens of Maryland and the citizens of adjoining states, and

"Whereas, the hostility shown by the officials and citizens of the State of Virginia to the law enforcement officers and citizens of the State of Maryland on the Potomac River, by reason of shootings and sabotage of vessels has created a situation which the State of Maryland can no longer tolerate, and

[8] It is clear that the General Assembly of Maryland did not desire to prohibit Virginians from enjoying the use of the Potomac River, for in the concluding paragraph of Chapter 770, Laws of 1957, it stated as follows:

"Sec. 2. And be it further enacted, That it is the legislative intent in the enactment of this law to vest in the State of Maryland all the licensing provisions concerning the taking of fish, oysters, crabs and clams from the Potomac River, to give the State of Maryland and its law enforcement officers complete control and jurisdiction over such fisheries in the Potomac River and (except as provided herein) to give to residents of the State of Virginia *an equal rights with citizens of Maryland in the use and enjoyment of such fisheries* to be exercised solely under the laws of the State of Maryland."

United States (No. 12, Original, Supreme Court of the United States, October Term, 1957) seeking to have the Compact of 1785 declared to be forever binding upon the State of Maryland and the Commonwealth of Virginia, and also seeking to have Chapters 766 and 770 of the Acts of 1957, *supra*, declared null and void. The Supreme Court accepted jurisdiction of the case and referred the matter to Mr. Justice Stanley Reed, retired, who was to act as Special Master (355 U.S. 946).

Mr. Justice Reed, after conferring with the Attorneys General of the respective states, passed an order staying the proceedings in order to give the two states an opportunity to attempt to adjust their differences. This stay order is now in effect.

The Governors of the respective states appointed commissioners for the purpose of resolving the differences existing between the two states. The Maryland commissioners, appointed by former Governor Theodore R. McKeldin, were: Carlyle Barton, Esq., Chairman, Judge Edward S. Delaplaine, Judge Stephen R. Collins, M. William Adelson, Esq. and William J. McWilliams, Esq. As a result of the deliberations of the Maryland Commission and their Virginia counterparts, the Potomac River Compact of 1958 was drafted and signed. Said Compact was submitted to the General Assembly of Maryland and ratified by the provisions of Chapter 269 of the Laws of 1959.[9] The said Compact has also been approved by the General Assembly of Virginia.

The provisions of Chapter 269, *supra*, were submitted to the voters at the General Election held on November 8, 1960, pursuant to the provisions of Article XVI of the

[9] For a complete analysis of the terms of the Compact, its advantages and disadvantages, see "*The Compacts and the River*" by William J. McWilliams, *supra*.

Constitution of Maryland after a petition by the requisite number of voters requesting a referendum on said law, had been submitted to the Secretary of State. It is the manner of the conduct of said election which has precipitated these proceedings.

ARGUMENT

I.

The Federal Question Sought To Be Reviewed Was Not Properly Raised and Preserved Below.

The Appellants did not raise in their complaint, brief or in oral argument in the Court of Appeals of Maryland the issues now sought to be raised by their Jurisdictional Statement. The opinion of the Court of Appeals of Maryland itself recognizes that the questions presented to this Court were not before the Court of Appeals of Maryland and were not considered by it (Jurisdictional Statement, Appendix A, pages 15, 16).

Based on the foregoing facts, it is beyond doubt that the questions sought to be reviewed are not now before this Court. The Maryland Court of Appeals, like most other appellate courts, has consistently and uniformly held that any contentions on behalf of an appellant not briefed in that Court may be deemed to be abandoned and need not be considered before it.[10]

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[10] *Vestry of Emanuel Church of Balto. v. Safe Dep. & Tr. Co.*, 169 Md. 28, 37, 179 A. 164; *Taxes v. Aerial Products, Inc.*, 210 Md. 627, 644, 124 A. 2d 805; *Schneider v. Davis*, 194 Md. 316, 71 A. 2d 32; *Holler v. Lowery*, 175 Md. 149, 200 A. 353; *Wolfe v. State, use of Brown*, 173 Md. 103, 194 A. 832; *State v. United Rcys. & Elec. Co.*, 162 Md. 404, 159 A. 916; *Globe Slicing Mach. Co. v. Murphy*, 161 Md. 667, 158 A. 26; *May Co. v. Drury*, 160 Md. 143, 153 A. 61. See also Md. Rules of Procedure, Rule 831, formerly 39 of the Rules and Regulations respecting Appeals of the Court of Appeals of Maryland; *Schroeffer v. A. S. Abell Co.*, 4th C.C.A. 138 F. 2d 111, cert. den. 321 U.S. 763, rehearing den. 322 U.S. 770; 2 Maryland Law Encyclopedia, Appeal and Error, §402, pp. 312-13.

It is clear beyond the slightest question that no Federal issue was raised in the Circuit Court of Baltimore City or the Court of Appeals of Maryland and, therefore, there is nothing for this Court to review. *Wilson v. Cook*, 327 U.S. 474.

The Appellants for the first time seek to claim a deprivation of voting rights, claiming that voting "in the dark" is as much a dilution of the right to vote as that which is caused by malapportionment. The complaint does not allege that the Appellants were directly or indirectly denied either the right to vote or that their vote was not fully counted on the issue involved. The Appellants are now claiming that because of the adverse decision on the vote at the General Election of November 8, 1960, the voters of certain counties were denied equal protection of the law. There is no case or authority cited for the fact that it is the Appellee's responsibility to instruct the Appellants or others on how they should cast their vote. It is most novel that the Appellants now claim that the State has withheld knowledge of the matter being voted upon and, therefore, denied them "full participation" in the aforementioned election. The opinion of the Court of Appeals of Maryland clearly finds that it is beyond reason that almost 450,000 individuals who voted on the issue, or any substantial portion of them, did not understand the issue on which they voted. The total vote cast on the compact was larger than that cast for and against all but two of the fifteen constitutional amendments voted on at the same time. In addition, in twenty-one of the twenty-three counties of Maryland and in Baltimore City, the vote on the compact issue was greater than the average vote on all the constitutional questions.

II.

This Case Is Not Within the Appeal Jurisdiction of This Court.

The Appellants neither in their pleadings nor in their briefs have contended that the provisions of the Maryland Constitution or of Article 33, Section 170, of the Annotated Code of Maryland (1957 Ed.) are void, but, to the contrary, the Appellants have relied upon the provisions thereof as the basis of their cause of action in this case. At no stage of the proceedings was a Federal claim made that the provisions were void under the Federal Constitution. Under these circumstances, it is clear that the constitutional provisions and statute relating to the referendum were not challenged. The provisions of Chapter 269, *supra*, were not challenged as being in violation of any Federal constitutional right, but were challenged as being in violation of certain provisions of the Maryland Constitution.

The Maryland Court of Appeals ruled that the State of Maryland had the power to make a compact with a sister state and that the use of a compact for the execution of governmental functions is not an abdication but an exercise of government.

It is therefore clear that no appeal will lie, since the validity of a statute was not ruled upon on Federal constitutional grounds. *Raley v. Ohio*, 360 U.S. 423, 43[illegible]. *Charleston Federal Savings and Loan Asso. v. Alderson*, 324 U.S. 182.

III.

This Appeal Does Not Present the Question Sought To Be Reviewed or any Substantial Federal Question, and It Is Manifest that the Questions on which the Decision of this Case Depend are so Unsubstantial As To Not Require Further Argument.

The two elements in the Appellants' claim of Federal rights are:

(a) That by the failure to adequately publish the text of the referred law, an entire election on the referred law is void since it precluded the Appellants from voting intelligently upon the matter; and

(b) That the compact between the State of Maryland and the Commonwealth of Virginia abdicates the sovereignty of the State of Maryland and therefore would violate Appellants' right of due process and equal protection.

The alleged failure to adequately publish the text of the referred law was a question of interpretation of a State statute and a State constitutional provision. The Maryland Court of Appeals found a difference between the effect to be given election laws *before* an election and the effect of the same provisions *after* an election. The Court concluded that if the election has been held, the failure of election officials to strictly follow the law will not vitiate the express will of the electorate unless the failure of the election officials has interfered with the full and fair expression of the public will. It is clear that this holding does not involve any Federal question.

As to the second element, the record clearly shows that the Appellants have been deprived of no Federally-protected right whatsoever and that the State of Maryland

has merely exercised its governmental function to enter into a compact with a sister state to regulate a mutual problem. It has been clearly recognized that interstate compacts are a proper and necessary method of dealing with problems which affect more than one state. See Frankfurter & Landis, *The Compact Clause of the Constitution; A Study in Interstate Adjustments*, 34 Yale Law Journal, 685; *Hinderlider v. LaPlata R. & Cherry Creek D. Co.*, 304 U.S. 92; *West Virginia v. Sims*, 341 U.S. 22; *Petty v. Tennessee-Missouri Bridge Commission*, 359 U.S. 275; *New York v. O'Neill*, 359 U.S. 1.

The Appellants have stated no substantial Federal issue and, therefore, this Court should dismiss the appeal or affirm the decision.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this appeal be dismissed, or in the alternative that the decision of the Court of Appeals of Maryland be affirmed, the mandate to issue forthwith.

Respectfully submitted,

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For Appellee.